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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,670	05/24/2001	Tetsuo Nishimoto	393032025300	3831

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EXAMINER

WITKOWSKI, STANLEY J

ART UNIT PAPER NUMBER

2837

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864670

Applicant(s)

Nishimoto et al.

Examiner

Witkowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/6/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-36 are rejected under 35 U.S.C. 102(b) as being fully met by Toriumi.

This patent discloses the transmission and reception of music data comprising melody information. Background video data is also transmitted and reads on applicant's content information from the server or transmitter for imparting an additional value to the melody information. Claims 1-26 are met. Regarding claims 27-36, the music data comprising melody information reads on applicant's musical content information with the background video data reading on applicant's input parameter information. Applicant's arguments in the amendment filed June 6, 2002 point to the transmission of musical information based on musical parameters provided by the client or that the server converts musical content information by imparting an additional value which is not claimed.

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3. Claims 1-36 are rejected under 35 U.S.C. 102(b) as being fully met by Sone et al.

This patent discloses the transmission and reception of a music pieces reading on applicant's transmitted melody information. Background image information is also transmitted and reads on applicant's content information from the server or transmitter for imparting an additional value to the melody information. Claims 1-26 are met. Regarding claims 27-36, the music piece reads on applicant's musical content information with the background image information reading on applicant's input parameter information. Applicant's arguments in the amendment filed June 6, 2002 point to a server converting musical content information or creating and retransmitting musical content information based on musical parameter data which is not claimed.

4. Claims 1-36 are rejected under 35 U.S.C. 102(e) as being fully met by Song.

This patent discloses the transmission and reception of melody information. Accompaniment and image control signals are transmitted and reads on applicant's content information from the server or transmitter for imparting an additional value to the melody information. Claims 1-26 are met. Regarding claims 27-36, the melody information reads on applicant's musical content information with the accompaniment and image control signals reading on applicant's input parameter information. Applicant's arguments in the amendment filed June 6, 2002 point to imparting additional values to musical content information via a server terminal or creating musical content information based on parameter information provided by a client terminal. Firstly, the Song server is providing the accompaniment and image control signals

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via the server to a client terminal. This is the additional value. Secondly, the claims do not call for creating musical content information based on a parameter information provided by a client terminal.

5. Claims 1-36 are rejected under 35 U.S.C. 102(e) as being fully met by Kurakake.

This patent discloses the transmission and reception of melody information. The accompaniment is transmitted and reads on applicant's content information from the server or transmitter for imparting an additional value to the melody information. Claims 1-26 are met. Regarding claims 27-36, the melody information reads on applicant's musical content information with the accompaniment reading on applicant's input parameter information. Applicant's arguments in the amendment filed June 6, 2002 point to imparting additional values to musical content information via a server terminal or creating musical content information based on parameter information provided by a client terminal. Firstly, the Kurakake server is providing the accompaniment via the sever to a client terminal. This is the additional value. Secondly, the claims do not call for creating musical content information based on a parameter information provided by a client terminal.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication should be directed to Stanley J. Witkowski at telephone number 308-3101.

witkowski/ds

08/13/02



Stanley Witkowski
Primary Examiner